

*REMARKS/ARGUMENTS**Office Action*

The Office Action sets forth a restriction requirement as between (1) a method for inducing an immune response comprising administering a vector comprising a gene encoding a breast cancer associated antigen (Group I; claims 1-22 and 33-40 [sic 33-39]), (2) a kit comprising at least one pox vector encoding two breast cancer associated antigens (Group II; claims 23 and 24), (3) a nucleic acid molecule encoding a MUC-1 fragment (Group III, claims 25-32 and 41-43 [sic 42-43]), (4) a method of inducing an immunological response comprising administering an effective amount of the polypeptide of SEQ ID NO: 2 and SEQ ID NO: 4 (Group IV, claim 40), and (5) a kit comprising the polypeptide of SEQ ID NO: 2 or SEQ ID NO: 4 (Group V, claim 41).

The Office Action also sets forth an election of species requirement as between Species (a) – mucin (MUC), Species (b) – CEA, Species (c) – NY-BR-1, Species (d) – Her2Neu, Species (e) – uPA, Species (f) – NY-BR-62, and Species (g) – NY-BR-85.

Applicants' Election

Applicants elect, with traverse, the claims of Group I (claims 1-22 and 33-39) directed to a method for inducing an immune response comprising administering a vector comprising a gene encoding a breast cancer associated antigen, for further prosecution.

With regard to the species election requirement, Applicants elect, with traverse, Species (a) – mucin (MUC). All of the claims (i.e., claims 1-43) read on the elected species.

Reconsideration of the group and species restriction requirements is hereby requested.

Discussion of the Restriction Requirement

The subject application is a U.S. national stage application based on the international application PCT/US04/037810. The Office Action alleges that the inventions defined by the claims of Groups I-V do not relate to a single general inventive concept under PCT Rule 13.2 because they lack the same “special technical features.” Under PCT Rule 13.2, a group of inventions is considered linked to form a single general inventive concept where there is a

technical relationship among the inventions that involves at least one common or corresponding special technical feature.

Applicants note that the claims of Groups I and II encompass a vector encoding two breast cancer associated antigens. For this reason, Applicants believe that the subject matter of the claims of at least Groups I and II overlaps in scope such that a search for prior art with respect to either Group I or Group II would likely uncover references that would be considered by the Office during the examination of the other group. As a result, the Examiner would incur no undue burden in examining the claims of both Group I and Group II at the same time. See also M.P.E.P. § 803 ("If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions." (emphasis added)).

Similarly, in view of the nature of the subject matter defined by the pending claims, the election of species requirement is inappropriate. In any event, consistent with an election of species requirement, other species within the elected "genus" should be considered by the Examiner upon an indication of allowable subject matter with respect to the elected species.

Accordingly, Applicants respectfully request that the Examiner withdraws the group (at least as it pertains to Groups I and II) and species restriction requirements issued against the pending claims.

Conclusion

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned agent.

Respectfully submitted,



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